APPENDIX

UNITED STATES DEPARTMENT OF THE INTERIOR

Office of the Solicitor, Washington

M. 31897 OCTOBER 20, 1942.

The Honorable, the Secretary of the Interior.

MY DEAR MR. SECRETARY:

My opinion has been requested on the question of whether section 18 of the act of February 14, 1920 (41 Stat. 408, 426), which vests in the Superintendent for the Five Civilized Tribes of Oklahoma certain responsibilities respecting the disposition of restricted Indian moneys, is superseded by section 1 of the act of January 27, 1933 (47 Stat. 777), which relates to the responsibilities of the Secretary of the Interior with respect to such moneys.

Section 18 of the act of 1920 provides:

> "* * * That hereafter no undisputed claims to be paid from individual moneys of restricted allottees * * * or uncontested * * * leases * * * made by individual restricted Indian allottees * * * shall be forwarded to the Secretary of the Interior for approval, but all such undisputed claims or uncontested leases * * * shall hereafter be paid, approved, rejected, or disapproved by the Superintendent for the Five Civilized Tribes of Oklahoma: *Provided, however,* That any party aggrieved by any decision or order of the Superintendent for the Five Civilized Tribes of Oklahoma may appeal from the

> same to the Secretary of the Interior within 30 days from the date of said decision or order."

The pertinent section of the 1933 act provides:

> "That all funds and other securities now held by or which may hereafter come under the supervision of the Secretary of the Interior * * * shall remain subject to * * * expenditure * * * for the use and benefit of the individual Indians to whom such funds and securities belong, under such rules and regulations as said Secretary may prescribe: * * *"

The question now raised relates entirely to the distribution of responsibilities between the Secretary of the Interior and the Superintendent of the Five Civilized Tribes. Specifically the question is whether the necessity for a particular statutory procedure for the payment of "undisputed claims," which is required by the act of 1920, has been eliminated by reason of the general language contained in the 1933 act. I am satisfied that the 1933 act was not intended to alter the procedural requirements of the 1920 statute and that the language of the 1933 act cannot reasonably be construed to effect a repeal by implication of the 1920 statutory requirements. The 1933 act specifies that certain funds shall *remain* subject to expenditure under regulations prescribed by the Secretary. It does not say that the Secretary may prescribe regulations without regard to prior statutes on the subject. On the contrary, the use of the term "remain" in the 1933 statute indicates that a continuation, rather

than an expansion, of the Secretary's power as established prior to 1933 is intended. (See 54 I. D. 382.)

Prior to 1933, the Secretary exercised general supervision over the handling of individual restricted funds subject to various statutory limitations. One of these limitations was that contained in the 1920 act. The purpose of the provision in that act prescribing a particular procedure with respect to "undisputed claims" was to eliminate duplication and waste, avoid unnecessary delay and curtail the cost of administrative expenditures in handling all of the undisputed claims. (Cong. Rec., 66th Cong., 2d sess., pp. 1278–80; 65th Cong., 3d sess., pp. 2005–09; 65th Cong., 2d sess., pp. 6623–36, 6676–85.) There was no incompatibility between the Secretary's general supervision of the subject and the observance of this procedure prior to 1933, and there is none today. Supervision which takes the form of review on appeal is as legitimate a form of supervision as any other. A statutory prescription of this particular form must be viewed as parallel to many other statutory restrictions upon the subject matter which the Secretary of the Interior was compelled to observe prior to 1933 and which he is still compelled to observe. Upon the wisdom of this statutory restriction I offer no comment. Clearly it reflects a dissatisfaction on the part of Congress with delays incidental to the referring of routine business to Washington. Congress has not indicated any change from the attitude on this subject which it took in 1920.

Since, therefore, there is no incompatability between the two statutory provisions, I must hold that the requirement of the 1920 statute is not repealed by the 1933 act.

To this conclusion I must add the observation that while the procedural requirements of the 1920 statute have not been extinguished by anything contained in the 1933 act, the scope of the 1920 statutory requirement has, in my opinion, been misunderstood by the Superintendent of the Five Civilized Tribes. Correspondence from that official expressed the view that the 1920 statute vests in the Superintendent a broad authority with respect to the withdrawal of Indian moneys by Indians themselves. This view is apparently based upon an overruled Solicitor's opinion (D. 44083, February 7, 1919). The decision rendered in 1919 by Solicitor Mahaffie was reversed on November 4, 1921, in an opinion rendered by Solicitor Booth (M. 6397). The latter opinion held:

> "A request or demand by the Indian himself for any part or all of his funds is not such a 'claim' as would bring the matter within the statute."

I am entirely persuaded that the latter opinion, which has governed the Department for 21 years, is correct. It follows that the question of how far the Superintendent for the Five Civilized Tribes shall be given responsibility to pass on applications by Indians for the release of restricted funds is one to be determined in the discretion of the Secretary of the Interior. The limitations

upon discretion which the 1920 act imposes in the case of "undisputed claims" have no application to the lifting of restrictions upon Indian funds.

Respectfully,

(Sgd) WARNER W. GARDNER,
Solicitor.

Approved: October 20, 1942.

(Sgd) OSCAR L. CHAPMAN,
Assistant Secretary.

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